IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 22587 of 2007(L)

OS.238/2005 of PRINCIPAL SUB COURT,PARAVUR

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PETITIONER:

ORIENTAL INSURANCE CO.LTD.,
REGIONAL OFFICE, RAILWAY STATION ROAD, ERNAKULAM,
KOCHI-18, REPRESENTED BY ITS REGIONAL MANAGER.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENT:

K.M.REKHA ALIAS REKHA ROBI,
W/O.ROBI, MATTAPILLIL HOUSE, MOOTHAKUNNAM VILLAGE,
NORTH PARUR.

BY ADV. SRI.DINESH R.SHENOY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.22587/2007 L

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE PLAINT DTD. 6/06/05 IN O.S.NO.238/05 FILED BY THE RESPONDENT BEFORE THE SUB COURT, N.PARUR.

EXT.P2: COPY OF THE WRITTEN STATEMENT DTD. 21/10/05 FILED BY THE PETITIONER IN EXT.P1 SUIT.

EXT.P3: COPY OF THE APPLICATION DTD. 29/05/2007 AS I.A.NO.1794/07 FILED BY THE RESPONDENT IN EXT.P1 SUIT.

EXT.P4: COPY OF THE OBJECTIONS DTD. 5/06/2007 FILED BY THE PETITIONER IN EXT.P3 APPLICATION.

EXT.P5: COPY OF THE ORDER DTD. 8/06/2007 IN EXT.P3 APPLICATION.

RESPONDENT'S EXHIBITS:

EXT.R1: COPY OF THE JUDGMENT IN O.P.NO.15492/2003.

EXT.R2: COPY OF THE LETTER DTD. NIL ISSUED BY THE RESPONDENT TO THE PETITIONER COMPANY.

EXT.R3: COPY OF LETTER DTD. 26/06/2001 ISSUED BY THE RESPONDENT TO THE PETITIONER COMPANY WITH ANNEXURES.

EXT.R4: COPY OF THE HANDWRITTEN MEMO SENT BY THE PETITIONER COMPANY ALONG WITH CHEQUE FOR RS.17,096/-.

EXT.R5: COPY OF THE LETTER DTD. 1/1/2002 ISSUED BY THE PETITIONER COMPANY TO THE RESPONDENT.

EXT.R6: COPY OF THE LAWYER NOTICE ISSUED BY ADVOCATE BABU CHERUKARA DTD. 19/12/2002.

EXT.R7: COPY OF THE LETTER ISSUED BY THE RESPONDENT TO THE PETITIONER COMPANY DTD. 15/10/2004.

EXT.R8: COPY OF THE LETTER DTD. 28/12/2004 ISSUED BY THE PETITIONER TO THE RESPONDENT TOGETHER WITH ANNEXURES.

EXT.R9: COPY OF REPRESENTATION DTD. 28/01/2005 ISSUED BY THE RESPONDENT TO THE PETITIONER.

EXT.R10: COPY OF THE SAID CIRCULAR DTD. 9/12/1998 TOGETHER WITH THE SCHEDULE OF FEES.

EXT.R11: COPY OF LETTER DTD. 14/03/2005 ISSUED BY THE PETITIONER TO THE RESPONDENT.

/TRUE COPY/

KSS

M.N.KRISHNAN, J.

WP(C)No. 22587 OF 2007 L

Dated this the 10th August, 2007.

JUDGMENT

This writ petition is filed challenging the order of amendment passed by the court below. The suit is one for realisation of the amount due as balance advocate fees. The claim is for a sum of Rs.1,87,475/-. Now, by the proposed amendment what the plaintiff seeks to introduce is some numbers of the cases wherein also fee has to be paid to her. She does not want to change the valuation portion or the total amount claimed in the plaint. On the other hand learned counsel for the Insurance Company would contend that by introducing this amendment the plaintiff wants to incorporate number of cases wherein her right to claim fee, if any, is barred by limitation. The court below proceeded on the ground that it is only an omission of certain numbers and therefore applying the broad principles allowed the application for amendment. The court did not consider the question of limitation exhaustively or does not give a finding on the question from which date the amendment will relate back. If such a finding is recorded in the amendment application then naturally the right of the parties can be decided on that basis and if anybody is aggrieved he can challenge the same

in the appropriate forum. Therefore, since the court below has not considered the larger question and has not applied its mind to the decision reported in **Bhaskaran Nair v. Chandramathiyamma** {2006(1) KLT 533} which specifically deals with these propositions, I feel the court below has to consider the matter afresh. I make it very clear that I am not expressing anything on the merits of the case at this stage. But I am remitting back the matter for the purpose of considering the question of amendment in the light of the legal principles laid down in the decision referred to above and the imperative nature by which the court has to state from which date the amendment will commence. Therefore, the order under challenge is set aside and the matter is remitted back for fresh consideration in accordance with law and the court below is directed to dispose it of in accordance with law, within a time frame of two months. Parties are directed to appear before the court below on 4.9.2007. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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